## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON DIVISION

UNITED STATES OF AMERICA	)	
	)	Case No. 1:13CR00014
V.	)	OPINION AND ORDER
JESSIE MORGAN ERVIN, JR.,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Jessie Morgan Ervin, Jr., Pro Se Defendant.

The defendant has filed two motions requesting that the court appoint counsel to assist him in obtaining relief under the First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5220 (2018) ("2018 FSA" or "Act"), which made retroactive certain provisions of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372, 2372 (2010) ("2010 FSA").

Section 2 of the 2010 FSA reduced the penalties for offenses involving cocaine base by increasing the threshold drug quantities required to trigger mandatory minimum sentences under 21 U.S.C. § 841(b)(1). The 2018 FSA provides that the court may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced

sentence as if the 2010 FSA were in effect at the time the defendant's crime was

committed. 2018 FSA § 404(b).

The defendant was indicted in this court on April 8, 2013, and charged with,

among other things, possessing a firearm after having been convicted of a felony

(Count One), distributing and possessing with the intent to distribute cocaine base

(Counts Three and Four), and possessing with the intent to distribute 28 grams or

more of a mixture or substance containing cocaine base (Count Five).

defendant pleaded guilty to Counts One and Three. On October 23, 2013, the

defendant was sentenced to a term of 180 months of imprisonment to be followed

by a five-year period of supervised release.

Because the defendant was sentenced in 2013, he has already been sentenced

in accordance with the 2010 FSA. Thus, any motion seeking a reduced sentence

pursuant to the 2018 FSA would lack merit.

Accordingly, it is hereby **ORDERED** that the Motions to Appoint Counsel,

ECF Nos. 92 and 93, are DENIED.

ENTER: April 29, 2019

/s/ James P. Jones

United States District Judge

-2-